

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANGEL RAMON MARTINEZ,

Plaintiff,

- against -

MILTON BENITEZ, also known as  
“El Perro Amarillo”; and LUIS REDONDO,  
also known as “La Pauta,”

Defendants.

**ORDER**

22 Civ. 3412 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

The Complaint in this pro se case was filed on April 27, 2022. (Cmplt. (Dkt. No. 1)) According to the Complaint, Defendants are citizens of Honduras. (Id. ¶¶ 5-6) Defendants have not been served, and they have not appeared.

On July 29, 2022, this Court directed Plaintiff to “submit a letter describing his efforts to serve Defendants, and show cause why this case should not be dismissed for failure to prosecute.” (July 29, 2022 Order (Dkt. No. 4) at 2) This letter was due on August 25, 2022. (Id.) To date, Plaintiff has not filed such a letter.

As stated in this Court’s July 29, 2022 Order:

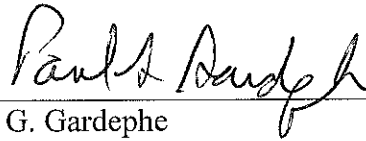
Fed. R. Civ. P. 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismissed the action without prejudice against that defendant or order that service be made within a specified time.” While that provision states that the 90-day time limit does not apply to service in a foreign country under Rule 4(f) or 4(j)(1), see Fed. R. Civ. P. 4(m), “a plaintiff does not have unlimited time to serve a defendant in a foreign country,” Yellowwave Corp. v. Mana, No. 00 CIV. 2267 SAS, 2000 WL 1508249, at \*2 (S.D.N.Y. Oct. 11, 2000) (citation omitted). “Rather, where service is in a foreign country, the Court uses a flexible due diligence standard to determine whether service of process [i]s timely.” Id. (quotation marks and citation omitted). However, Rule 4(m)’s time limit “is appropriate where [a] plaintiff has not even attempted service in the foreign country.” Id. (citations omitted).

(Id. at 1)

Here, there is no indication that Plaintiff has attempted to serve Defendants, and Plaintiff has not made a written application to the Court to extend the time for service. Accordingly, this action is dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m). The Clerk of the Court is directed to close the case.

Dated: New York, New York  
September 20, 2022

SO ORDERED.

A handwritten signature in cursive script, reading "Paul G. Gardephe", written over a horizontal line.

Paul G. Gardephe  
United States District Judge